



U.S. Department of Justice

United States Attorney
Southern District of New York86 Chambers Street
New York, New York 10007

May 27, 2020

MEMO ENDORSEDVIA ECFHon. Valerie E. Caproni
United States District Judge
Southern District of New York
40 Foley Square
New York, New York 10007USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 5/28/2020**Re: Bernal Gutierrez v. Decker, et al., No. 20 Civ. 4046 (VEC)**

Dear Judge Caproni:

This Office represents the government in the above-referenced habeas action brought under 28 U.S.C. § 2241, by petitioner Juan Edgar Bernal Gutierrez (“petitioner”), an alien in civil immigration detention at the Orange County Correctional Facility located in Goshen, New York. The petitioner filed this action yesterday together with a motion for an order to show cause, a temporary restraining order, and a preliminary injunction. This afternoon, this Court set a hearing on the motion for tomorrow, May 28, 2020 at 10:00 a.m. I write respectfully to request, with the consent of petitioner’s counsel, that the Court briefly adjourn the May 28 hearing to allow the government, which was served with the petition this morning,¹ to gather the medical records and other documents necessary to present its opposition. The government respectfully requests that the hearing be adjourned until Friday, May 29, 2020 or Monday, June 1, 2020, and that it be given leave to submit a response to the motion by 6:00 p.m. the day before the hearing.

The additional time is necessary for the government to have a fair opportunity to oppose the request for preliminary injunctive relief. Specifically, the government requires additional time to gather the documents, including the petitioner’s medical records, needed to formulate and defend its position in this action. *See, e.g., Garcia v. Yonkers Sch. Dist.*, 561 F.3d 97, 105 (2d Cir. 2009) (explaining that Rule 65(a)(1) of the Federal Rules of Civil Procedure “has been construed to require the district court to allow the adverse party sufficient time to marshal his evidence and present his arguments against the issuance of the injunction,” *i.e.*, the adverse party must be afforded a fair opportunity to oppose the preliminary injunction” (internal quotation marks and alterations omitted)). I note that, as of yesterday, the Orange County Correctional Facility, the facility where petitioner is detained, has no confirmed cases of COVID-19 among the ICE detainees (or inmates, who are housed separately) at that facility, nor are there any detainees or inmates detained there who are currently symptomatic for COVID-19. A declaration from the county officer in charge of the Orange County Correctional Facility attesting to these facts and providing information about the precautions taken at the facility to protect detainees and staff from potential exposure to COVID-19 was filed yesterday in *Black v. Decker*, No. 20 Civ. 3055 (LGS).

¹ The government received a draft copy of only the motion yesterday afternoon.

This is the government's first request for an adjournment of the May 27 hearing. As noted, counsel for the petitioner consents to this request. Counsel for both sides are available on May 29 and June 1 for a rescheduled hearing.

We thank the Court for its consideration of this request.

Respectfully submitted,

GEOFFREY S. BERMAN
United States Attorney
Southern District of New York

By: s/ Michael J. Byars
MICHAEL J. BYARS
Assistant United States Attorney
Telephone: (212) 637-2793
Facsimile: (212) 637-2786
E-mail: michael.byars@usdoj.gov

cc: Counsel of record (via ECF)

Application GRANTED. The hearing is adjourned to **June 1, 2020, at 11:00 a.m.** Petitioner's proposed order is due not later than **May 29, 2020.**

SO ORDERED.

 5/27/2020

HON. VALERIE CAPRONI
UNITED STATES DISTRICT JUDGE